

0+4  
**ORIGINAL**

BOOKET FILE COPY ORIGINAL

**RECEIVED**

**AUG 6 2001**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Application by Verizon Pennsylvania )  
Inc., Verizon Long Distance, Verizon )  
Enterprise Solutions, Verizon Global )  
Networks Inc., and Verizon Select )  
Services Inc., for Authorization To )  
Provide In-Region, InterLATA Services )  
in Pennsylvania )

CC Docket No. 01-138

**REPLY COMMENTS OF  
Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, hereby submits its reply comments in response to the Federal Communication Commission's ("FCC's" or "Commission's") Public Notice (DA 01-1486) in the above-captioned proceeding.

**I. OVERVIEW**

In these reply comments, Z-Tel addresses two primary issues. First, Z-Tel responds to the consultative report of the Pennsylvania Public Utility Commission ("PAPUC"), and demonstrates that Verizon has not satisfied the Commission's "complete when filed" standard with its Pennsylvania Applications. Second, Z-Tel supplements the record by demonstrating that Verizon's billing system still does not work, in spite of software changes implemented by Verizon on June 16, 2001, and therefore, Verizon still has not satisfied item ii of section 271's competitive checklist.<sup>1</sup> For these reasons, the Commission must reject Verizon's Application to provide in-region, long distance service in Pennsylvania pursuant to section 271 of the Communications Act of 1934, as amended ("Act").

<sup>1</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

## II. VERIZON'S APPLICATION FAILS TO MEET THE COMMISSION'S "COMPLETE WHEN FILED" STANDARD

"When a BOC files its application, it must demonstrate that it already is in full compliance with the requirements of section 271."<sup>2</sup> As a corollary to this fundamental principal of section 271 jurisprudence, the Commission consistently has held that "promises of *future* performance to address particular concerns ... have no probative value."<sup>3</sup> Collectively, these principals require that a BOC's application must be complete when filed. As demonstrated by numerous parties – and as admitted by Verizon, Verizon flatly lacks the ability to render accurate wholesale bills to competitors. As such, Verizon has failed to satisfy the competitive checklist, and supplemental information on planned future efforts to correct its billing problems cannot overcome Verizon's failure to comply with the competitive checklist.

Numerous commeters demonstrated that Verizon utterly lacks the ability to render accurate bills to CLECs using either paper or electronic format.<sup>4</sup> KPMG's attestation to the paper bill is flatly inconsistent with the operational experience of numerous carriers, including AT&T, MetTel, WorldCom, and Z-Tel.<sup>5</sup> The electronic bill similarly is inaccurate.<sup>6</sup> The

---

<sup>2</sup> *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, Interlata Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 38 (December 24, 1997) ("BellSouth South Carolina Order")

<sup>3</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 55 (1997)(emphasis original) ("Ameritech Michigan Order").

<sup>4</sup> *See generally*, WorldCom Comments; AT&T Comments; MetTel Comments; *See also*, Department of Justice Evaluation, pg. 3, noting that Verizon has presented insufficient evidence to show that numerous problems with its wholesale billing systems has been corrected.

<sup>5</sup> *See generally*, WorldCom Comments; CompTel Lazzara Decl. ¶ 6; *See also*, Department of Justice Evaluation, p. 8, noting that despite KPMG's conclusions, Verizon has acknowledged the inaccuracy of its paper bills.

operational importance of these issues similarly was outlined in numerous parties' comments and the DOJ's evaluation. Without question, Verizon has failed to satisfy checklist item two, and the Commission must reject Verizon's Application.

In its consultative report, the PAPUC noted that "electronic billing is an essential component of the billing process as established in the record. Without adequate electronic billing, CLECs are unable to verify the accuracy of Verizon PA's wholesale bills in a timely manner."<sup>7</sup> The PAPUC is correct. Unfortunately, the PAPUC prematurely accepted Verizon's assertion that its June 16, 2001 software upgrade addressed all of the remaining problems with the wholesale bill. The PAPUC noted that Verizon indicated that modifications to the electronic bills would be completed on or about June 16, 2001, and that Verizon would maintain a manual review process for a minimum of three bill cycles.<sup>8</sup> Incredibly, less than ten days after this promised software release, and before a single wholesale bill had been generated, much less reviewed, the PAPUC concluded that the measures taken by Verizon satisfied Verizon's checklist obligations.

It is clear that even the PAPUC was not convinced that Verizon's June 16, 2001 software modifications would be timely and effective. The PAPUC stated that "to ensure continued focus on this issue, we have chosen to adopt electronic billing metrics and remedies *to incent timely and effective implementation of these modifications.*"<sup>9</sup> Chairman Quain noted the

---

<sup>6</sup> Rubino Declaration, ¶ 12.

<sup>7</sup> *Consultative Report of the Pennsylvania Public Utility Commission*, June 25, 2001, p. 102.

<sup>8</sup> *Id.*, p. 103.

<sup>9</sup> *Id.* (emphasis added)

importance of verifying the effectiveness of software fixes during the April 25, 2001 *en banc*

hearing, in questioning Verizon's billing witness as follows:

Do you think it's unreasonable, given the historic experience with regard to billing....for members of the CLEC community who have had a level of discomfort and bad experiences which are confirmed by you to seek some verification that the fixes that are put in place will in fact work? Do you think that it is an unreasonable position for them to take?...But you agree that it's not unreasonable for them to sort of say 'prove it to me' at this point? Are we in agreement there?<sup>10</sup>

This Commission simply cannot rely on metric remedies as a surrogate for an accurate wholesale bill.

Z-Tel fully expects that Verizon will attempt to submit supplemental information on its billing problems in its reply comments. Z-Tel makes two statements on any such effort. First, there is no record evidence that Verizon's much-heralded billing "software fix," that was implemented June 16, 2001, has corrected Verizon's utter inability to render an accurate bill. Indeed, by Verizon's own admission, even errors that were to have been corrected on June 16, 2001, may continue to affect bills for several months in the future.<sup>11</sup> Second, any such effort would expressly violate the Commission's complete-as-filed standard.

The Commission stressed that an applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application. This prohibition applies to the submission, on reply, of factual evidence gathered after the initial filing that is not responsive to the oppositions filed. Moreover, under no circumstance is a BOC permitted to counter any arguments made in the comments with new factual evidence post-dating the filing of those comments.<sup>12</sup>

<sup>10</sup> Transcript of April 25, 2001, *En Banc* Hearing, pp. 132-134.

<sup>11</sup> Supplemental Declaration of Margaret Rubino, ¶ 6, attached hereto at *Tab A* ("Supplemental Rubino Declaration"). See, *infra*, Section III.

<sup>12</sup> *BellSouth South Carolina Order*, ¶ 38. See also, *Ameritech Michigan Order*, ¶ 56.

In other words, any effort by Verizon to demonstrate that its billing system will be fixed in the future cannot overcome the irrefutable fact that its Application fails to satisfy checklist item ii. Thus, the Commission must reject Verizon's Application.

**III. IN ANY EVENT, VERIZON'S APPLICATION CONTINUES TO FAIL TO SATISFY CHECKLIST ITEM TWO BECAUSE VERIZON STILL HAS NEVER RENDERED AN ACCURATE BILL TO COMPETITORS**

In the McLean affidavit to the Verizon Application, it is alleged that "[f]ixes introduced in March, April, May, and June have substantially improved the BOS BDT [electronic bill]."<sup>13</sup> As Z-Tel and others stated in initial comments, Verizon's: (1) March "fixes" did not cure identified billing inaccuracies; (2) April "fixes" did not cure identified billing inaccuracies; and (3) May "fixes" did not cure identified billing inaccuracies.

DOJ noted that "[b]ecause several of Verizon's billing system fixes immediately preceded its application, CLECs have been unable to assess the effectiveness of the fixes implemented on June 16."<sup>14</sup> Z-Tel has reviewed its June bill with Verizon and unequivocally determined that Verizon's June fixes similarly FAILED TO FIX IDENTIFIED BILLING INACCURACIES.<sup>15</sup> By way of example, Z-Tel's June 28, 2001 bill included tens of thousands of dollars in charges and credits labeled "one-time charge," "miscellaneous charges," and "service connection per link" for which there was no associated telephone number and no further explanation of any kind.<sup>16</sup> As Z-Tel predicted in its initial comments, "Verizon expects to

---

<sup>13</sup> McLean Affidavit at ¶ 135.

<sup>14</sup> DOJ Evaluation, 11.

<sup>15</sup> Supplemental Rubino Declaration, ¶ 4.

<sup>16</sup> *Id.*, n.1.

institute additional ‘fixes,’”<sup>17</sup> which may or may not address adequately existing, documented billing deficiencies.<sup>18</sup> Thus, Verizon continues to fail to satisfy checklist item ii, and the Commission must reject the Application.

In closing, Z-Tel submits that DOJ is correct in expressly stating that “[t]he Commission should take care to avoid a precedent that would permit the requirements of section 271 to be satisfied merely by promises of future compliance.”<sup>19</sup> Verizon knows how to make a billing system work, as evidenced by its performance in Massachusetts and New York. The record demonstrates without question that Verizon’s billing system in Pennsylvania simply does not work. The only question is whether the Commission will enforce the competitive checklist, or act affirmatively to substitute “paper promises” for actual compliance with section 271.

---

<sup>17</sup> Z-Tel Comments, p. 9.

<sup>18</sup> *Id.*

<sup>19</sup> DOJ Evaluation, 14.

#### IV. CONCLUSION

Consistent with the foregoing, the Commission should reject Verizon's Application.

Respectfully submitted,



Jonathan E. Canis  
KELLEY DRYE & WARREN LLP  
1200 Nineteenth Street, NW, Fifth Floor  
Washington, DC 20036  
Tel: (202) 955-9600  
Fax: (202) 955-9792

Michael B. Hazzard  
Tamara E. Connor  
KELLEY DRYE & WARREN LLP  
8000 Towers Crescent Drive, Twelfth Floor  
Vienna, Virginia 22182  
Tel: (703) 918-2300  
Fax: (703) 918-2450

COUNSEL TO Z-TEL COMMUNICATIONS, INC.

Dated: August 6, 2001

# **ATTACHMENT A**



Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Application by Verizon Pennsylvania	)	
Inc., Verizon Long Distance, Verizon	)	
Enterprise Solutions, Verizon Global	)	
Networks Inc., and Verizon Select	)	CC Docket No. 01-138
Services Inc., for Authorization to	)	
Provide In-Region, InterLATA Services	)	
In Pennsylvania	)	

SUPPLEMENTAL DECLARATION OF MARGARET D. RUBINO  
ON BEHALF OF  
Z-TEL COMMUNICATIONS, INC.

1. My name is Margaret D. Rubino. My business address is 601 South Harbour Island Boulevard, Suite 220, Tampa, Florida, 33602. I am employed by Z-Tel Communications, Inc. (Z-Tel) as a Regional Vice President – Industry Policy. My background is detailed in my July 11, 2001 declaration, filed in this docket.

I. Purpose of Declaration

2. The purpose of this declaration is to update the record with respect to issues raised in my earlier declaration.

II. Z-Tel's June 28 Wholesale Bill Reflected Some Improvement Over Past Months

3. Z-Tel received its June 28, 2001 wholesale bill for Pennsylvania, in BOS/BDT format, on July 13, 2001. This bill was much more timely than in previous months. For the first time, the bill reflected correct rates for unbundled loops in all density zones.

III. Verizon Continues to Make Changes to the Billing System to Address Problems

4. As with previous months, the June 28, 2001 wholesale bill included incorrect charges for retail features and taxes. It also included charges with either no

description or with an incomprehensible description of what the charge was, and with no telephone number associated with the charges.

5. Representatives of Verizon came to Z-Tel's offices in Tampa on July 31, 2001 to review the systems changes that were being implemented to correct the defects that Z-Tel and others had identified with the wholesale bills. They described software releases that were implemented in May, June, and July, 2001, to eliminate the need for manual adjustments to the BOS/BDT. These releases are intended to address a number of the charges that currently appear with vague phrase codes such as unknown local usage, carrier usage, unknown usage, and unknown other charges and credits.

6. While Z-Tel is encouraged by the attention Verizon has now devoted to fixing the problems with its wholesale bill, we are unable to verify that the software releases have eliminated the errors they were designed to correct. As Verizon's representatives described the problems, even if the software fixes are effective there will be residual charges on our wholesale bill until discrepancies on individual accounts are cleared. In addition, until the effects of those changes are reflected in our wholesale bill, we are not able to ascertain whether the software releases of the past few months have fixed all of the defects causing the billing inaccuracies.<sup>1</sup>

7. This concludes my declaration.

---

<sup>1</sup> Z-Tel's June 28, 2001 bill included tens of thousands of dollars in charges and credits labeled "one-time charge", "miscellaneous charges", and "service connection per link" for which there was no associated telephone number and no further explanation of any kind. The presentation made by Verizon's representatives on July 31, 2001 did not address these issues.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 6, 2001

  
Margaret D. Rubino

## CERTIFICATE OF SERVICE

I, Charles "Chip" M. Hines III, hereby certify that a true and correct copy of the foregoing **"Reply Comments of Z-Tel; CC Docket No. 01-138"** was delivered this 6<sup>th</sup> day of August, 2001 to the individuals on the following list:

Magalie R. Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, TW-B204  
Washington, DC 20554

Chairman Michael K. Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Kathleen Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Michael Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Kevin Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Room 5-C327  
Washington, DC 20554

International Transcription Service  
1231 20<sup>th</sup> Street NW  
Washington, DC 20036

Donald J. Russell  
Kelly Trainor  
Antitrust Division, TTF  
U.S. Department of Justice  
1401 H Street NW, Suite 8000  
Washington, DC 20005

James J. McNulty  
Secretary's Bureau  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor, 7 North  
Harrisburg, PA 17120

Michael E. Glover  
Karen Zacharia  
Leslie A. Vial  
Donna M. Epps  
Joseph DiBella  
Verizon  
1320 North Court House Road, Eighth Floor  
Arlington, VA 22201

Ann Berkowitz  
Verizon  
1300 I Street NW, Suite 400 West  
Washington, DC 20005

Julia A. Conover  
Verizon Pennsylvania Inc.  
1717 Arch Street, 32<sup>nd</sup> Floor  
Philadelphia, PA 19103

Mark L. Evans  
Evan T. Leo  
Scott H. Angstreich  
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.  
1615 M Street NW, Suite 400  
Washington, DC 20036

James G. Pachulski  
TechNet Law Group, P.C.  
1100 New York Avenue NW, Suite 365  
Washington, DC 20005

Carol Ann Bischoff  
Executive Vice President and General Counsel  
Competitive Telecommunications Association  
1900 M Street, NW  
Washington, DC 20036

Maureen Flood  
Director, Regulatory and State Affairs  
Competitive Telecommunications Association  
1900 M Street, NW  
Washington, DC 20036

Robert Aamoth  
Steven Augustino  
Andrew Klein  
Jennifer Kashatus  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036

Debbie Goldman  
George Kohl  
Communications Workers of America  
501 3<sup>rd</sup> Street, NW  
Washington, DC 20001

Keith Seat  
Senior Counsel  
Federal Law and Public Policy  
WorldCom  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036

Jeffrey Owen  
Cooper Owen & Renner, PC  
1600 Benedum Trees Building  
223 Fourth Avenue  
Pittsburgh, PA 15222

Albert Kramer  
Jacob Farber  
Dickstein Shapiro Morin & Oshinsky, LLP  
2101 L Street, NW  
Washington, DC 20037

Jonathan Canis  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW, Fifth Floor  
Washington, DC 20036

Michael Hazzard  
Kelley Drye & Warren, LLP  
8000 Towers Crescent Drive  
Twelfth Floor  
Vienna, VA 22182

Christopher Moore  
Sprint  
401 9<sup>th</sup> Street, NW  
Suite 400  
Washington, DC 20004

Zsuzsanna Benedek  
Sprint  
1201 Walnut Bottom Road  
Carlisle, PA 17013

A. Renee Callahan  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20036

Robin Cohn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, DC 20007-5116

Harisha Bastiampillai  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, DC 20007-5116  
Martin Arias  
Cavalier Telephone Mid-Atlantic, LLC  
965 Thomas Drive  
Warminster, PA 18974

Philip McClelland  
Senior Assistant Consumer Advocate  
Commonwealth of Pennsylvania  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Forum Place  
Harrisburg, PA 17101-1923

Shaun Wiggins  
Executive Director  
Keep America Connected!  
P.O. Box 27911  
Washington, DC 20005

Deborah Kaplan  
Executive Director  
World Institute on Disability  
510 16<sup>th</sup> Street, Suite 100  
Oakland, CA 94612

Christi Shewman  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20036

Jason Oxman  
Senior Counsel  
Covad Communications Company  
600 14<sup>th</sup> Street, NW, Suite 750  
Washington, DC 20005

Mark Rosenblum  
Richard Rubin  
AT&T Corporation  
295 North Maple Ave.  
Basking Ridge, NJ 07920-1002

David Carpenter  
Mark Haddad  
Ronald Flagg  
R. Merinda Wilson  
David Lawson  
Richard Young  
Christopher Shenk  
Ronald Steiner  
Sidley Austin Brown & Wood  
1722 Eye Street, NW  
Washington, DC 20006

Rodney Joyce  
Shook, Hardy & Bacon, L.L.P.  
Hamilton Square  
600 14<sup>th</sup> Street, NW, Suite 800  
Washington, DC 20005-2004

Dirck Hargraves  
Counsel  
Telecommunications Research and Action Center  
P.O. Box 27279  
Washington, DC 20005

Charles Hunter  
Catherine Hannan  
Hunter Communications Law Group  
1620 I Street, NW  
Suite 701  
Washington, DC 20006

A handwritten signature in black ink, appearing to read "Charles M. Hines III", written over a horizontal line.

Charles "Chip" M. Hines III